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SUPERIOR COURT
COUNTY OF SAN FRANCISCO

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7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO

11 LAURENCE TAIN, D.C., DONALD NIELSEN, D.C.,
ROBERT BITTERS, D.C., STEPHANIE
12 WATTENBERG, D.C., and LORI PRESCOTT, D.C.,

13 Plaintiffs and Petitioners,

15 STATE BOARD OF CHIROPRACTIC EXAMINERS,
CALIFORNIA ACUPUNCTURE BOARD,
16 COUNCIL ON CHIROPRACTIC EDUCATION,
and DOES 1 to 20,

18 Defendants and Respondents.

Case No. CGC-03-419378

12 DEFENDANT AND
RESPONDENT BOARD OF
CHIROPRACTIC EXAMINERS'
ANSWER TO SECOND
AMENDED COMPLAINT

Date: January 28, 2004
Time: 2:00 p.m.
Department: 502

OFFICE COPY
ATTORNEY GENERAL

19 COMES NOW defendant and respondent, California State Board of Chiropractic
20 Examiners ("Chiropractic Board"), and makes and files this answer to the Second Amended
21 Complaint ("SAC") of plaintiffs and petitioners ("plaintiffs") on file herein. The Chiropractic
22 Board admits, denies and alleges as follows:

- 23 1. Answering paragraph 1, the Chiropractic Board admits the allegations contained
24 therein.
25 2. Answering paragraph 2, the Chiropractic Board admits that the five named
26 individual plaintiffs, i.e., Laurence Tain, Donald Nielsen, Robert Bitters, Stephanie Wattenberg
27 and Lori Prescott are all licensed practitioners of chiropractic in the State of California.

28 1.

1 The Chiropractic Board denies generally and specifically each and every allegation that
2 the five named plaintiffs as set forth herein bring this matter in the name of any present and/or
3 prospective patients in that the named plaintiffs lack standing to do so.

4 3. Answering paragraph 3, the Chiropractic Board admits the allegations contained
5 therein.

6 4. Answering paragraph 4, the Chiropractic Board admits the allegations contained
7 therein.

8 5. Answering paragraph 5, the Chiropractic Board admits the allegations contained
9 therein.

10 6. Answering paragraph 6, the Chiropractic Board lacks information or belief
11 sufficient to be able to answer the allegations in paragraph 6 and, on the basis of that lack
12 of information or belief, denies generally and specifically each and every allegation contained
13 therein.

14 7. Answering paragraph 7, the Chiropractic Board admits the allegations contained
15 therein.

16 8. Answering paragraph 8, the Chiropractic Board admits the allegations contained
17 therein.

18 9. Answering paragraph 9, the Chiropractic Board admits the allegations contained
19 therein.

20 10. Answering paragraph 10, the Chiropractic Board admits the allegations
21 contained therein as to the creation of the Board of Osteopathic Examiners and that the licensing
22 structure of the said Board of Osteopathic Examiners is essentially identical with that established
23 for the Medical Board of California and its predecessors. The Chiropractic Board also admits
24 that the practice permitted to persons licensed as osteopaths is essentially identical to that
25 permitted to individuals licensed as physicians and surgeons by the Medical Board of California.
26 The Chiropractic Board denies generally and specifically each and every other allegation
27 contained therein.

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1 therein and affirmatively alleges that plaintiffs, individually and collectively, face no greater
2 likelihood of discipline or criminal prosecution than any other individual chiropractor or group
3 of chiropractors in the State of California.

4 20. Answering paragraph 20, the Chiropractic Board admits the allegations contained
5 therein.

6 21. Answering paragraph 21, the Chiropractic Board admits that in plaintiffs
7 First Cause of Action of the SAC plaintiffs seek a judicial declaration of the scope of chiropractic
8 practice under the Chiropractic Act of 1922 and that plaintiffs have attached a true and correct
9 copy of Title 16, California Code of Regulations section 302 ("Rule 302") to their complaint.
10 The Chiropractic Board denies generally and specifically each and every other allegation
11 contained therein.

12 22. Answering paragraph 22, the Chiropractic Board admits that paragraph 22
13 is a mere pleading convention requiring no answer.

14 23. Answering paragraph 23, the Chiropractic Board admits that Rule 302 is entirely
15 lawful and appropriately and fully defines the practice rights, i.e., the scope of practice, of
16 chiropractors in the State of California. The Chiropractic Board denies generally and specifically
17 each and every other allegation contained therein and affirmatively alleges that no case or
18 controversy exists between plaintiffs and the Chiropractic Board as to the legality of Rule 302,
19 that any action challenging Rule 302 by plaintiffs is barred by laches, that plaintiffs lack standing
20 to assert any challenge to Rule 302, and that plaintiffs have failed to exhaust administrative
21 remedies.

22 24. Answering paragraph 24, the Chiropractic Board admits the allegations contained
23 therein, if any.

24 25. Answering paragraph 25, the Chiropractic Board admits that plaintiffs' allegations
25 as to the scope of practice allowable under the Chiropractic Initiative Act of 1922 ("Act")
26 are as set forth in paragraph 26 and its subparts as appear in plaintiffs' SAC.

27 26. Answering paragraph 26 and its subparts appearing at pages 7-10 of plaintiffs'
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1 SAC, the Chiropractic Board admits that plaintiffs' contentions are as set forth therein, and
 2 affirmatively alleges that plaintiffs' said contentions as to the meaning of the phrases or terms
 3 "chiropractic," "as taught in chiropractic schools or colleges," "any drug or medicine now or
 4 hereafter included in *materia medica*," "surgery," "practice medicine," or "practice osteopathy"
 5 are precluded, erroneous, and legally of no force or effect due to the rule of stare decisis and the
 6 decisions of *People v. Fowler* (1938) 32 Cal.App.2d (Supp.) 737 and *Crees v. Board of Medical*
 7 *Examiners* (1963) 213 Cal.App.2d 195.

8 27. Answering paragraph 27, the Chiropractic Board admits that paragraph 27
 9 is a mere pleading convention requiring no answer.

10 28. Answering paragraph 28, the Chiropractic Board lacks information or belief
 11 sufficient to be able to answer the allegations in paragraph 28 and, on the basis of that lack of
 12 information or belief, denies generally and specifically each and every allegation contained
 13 therein.

14 29. Answering paragraph 29, the Chiropractic Board denies generally and specifically
 15 each and every allegation contained therein, and affirmatively alleges that the "practice rights,"
 16 i.e., scope of practice, of chiropractors as set forth in section 7 of the Act, Business and
 17 Professions Code section 1000-7, is a rational legislative classification and act of the People of
 18 California and, further, that Rule 302 likewise is a rational regulatory interpretation of the scope
 19 of chiropractic practice as set forth in section 7 of the Act as interpreted by *Fowler* and *Crees*,
 20 *supra*, to which great weight and deference is due by the judiciary.

21 30. Answering paragraph 30, the Chiropractic Board admits that paragraph 30
 22 is a mere pleading convention requiring no answer.

23 31. Answering paragraph 31, the Chiropractic Board lacks information or belief
 24 sufficient to be able to answer the allegations in paragraph 31 and, on the basis of that lack of
 25 information or belief, denies generally and specifically each and every allegation contained
 26 therein.

27 32. Answering paragraph 32, the Chiropractic Board lacks information or belief

1 sufficient to be able to answer the allegations in paragraph 32 and, on the basis of that lack
2 of information or belief, denies generally and specifically each and every allegation contained
3 therein.

4 33. Answering paragraph 33, the Chiropractic Board lacks information or belief
5 sufficient to be able to answer the allegations in paragraph 33 and, on the basis of that lack of
6 information or belief, denies generally and specifically each and every allegation contained
7 therein.

8 34. Answering paragraph 34, the Chiropractic Board lacks information or belief
9 sufficient to be able to answer the allegations in paragraph 34 that “[a]t all times prior to 1922
10 chiropractors generally subscribed to the holistic paradigm[;] with some variations between the
11 straight and mixer schools of chiropractic thought” and, on the basis of that lack of information
12 or belief, denies generally and specifically each and every allegation contained therein with
13 respect thereto and, further, denies generally and specifically each and every other allegation
14 contained therein, and affirmatively alleges that there is no fundamental right, of whatever
15 provenance or source, of chiropractors “to work within said variants of the holistic paradigm,
16 to fully develop their diagnostic and treatment perspective and to realize their own individual
17 identity within their chosen profession.”

18 35. Answering paragraph 35, the Chiropractic Board denies generally and specifically
19 each and every allegation contained therein and affirmatively alleges that Rule 302 is a rational
20 regulatory interpretation of the scope of chiropractic practice as set forth in section 7 of the Act
21 as interpreted by *Fowler and Crees, supra*, to which great weight and deference is due by the
22 judiciary.

23 36. Answering paragraph 36, the Chiropractic Board denies generally and specifically
24 each and every allegation contained therein and affirmatively alleges that section 7 of the Act,
25 Business and Professions Code section 1000-7, is a rational legislative classification and act of
26 the People of California and, further, that Rule 302 is a rational regulatory interpretation of the
27 scope of chiropractic practice as set forth in section 7 of the Act as interpreted by *Fowler* and

1 *Crees, supra*, to which great weight and deference is due by the judiciary.

2 37. Answering paragraph 37, the Chiropractic Board denies generally and specifically
3 each and every allegation contained therein and affirmatively alleges that Rule 302 is a rational
4 regulatory interpretation of the scope of chiropractic practice as set forth in section 7 of the Act
5 as interpreted by *Fowler and Crees, supra*, to which great weight and deference is due by the
6 judiciary and, further, that there is no protectable right of patients “to choose a mode of healing
7 more consonant with their personal beliefs and philosophical convictions than allopathic
8 medicine” or to choose any other particular “mode of healing,” nor is there a protectable
9 “more general right of all patients to reasonable access to lawful medical treatment of their own
10 choosing.”

11 38. Answering paragraph 38, the Chiropractic Board denies generally and specifically
12 each and every allegation contained therein and affirmatively alleges that section 7 of the Act,
13 Business and Professions Code section 1000-7, is a rational legislative classification and act
14 of the People of California and, further, that Rule 302 is a rational regulatory interpretation of
15 the scope of chiropractic practice as set forth in section 7 of the Act as interpreted by *Fowler and*
16 *Crees, supra*, to which great weight and deference is due by the judiciary.

17 39. Answering paragraph 39, the Chiropractic Board admits that paragraph 39
18 is a mere pleading convention requiring no answer.

19 40. Answering paragraph 40, the Chiropractic Board lacks information or belief
20 sufficient to be able to answer the allegations in paragraph 40 that “[p]art of the reason
21 for the subjugation of chiropractors has been, and continues to be, their general acceptance
22 of the teleological and holistic model of biology and medicine referred to in paragraph 32.
23 Said teleological and holistic model was marginalized from mainstream biology and medicine
24 during the period from at least the start of the 20th Century to approximately the start of the
25 1990s” and, on the basis of that lack of information or belief, denies generally and specifically
26 each and every allegation contained therein with respect thereto and, further, denies generally
27 and specifically each and every other allegation contained therein and affirmatively alleges

1 that chiropractors do not constitute a "suspect class" for purposes of heightened judicial scrutiny.

2 41. Answering paragraph 41, the Chiropractic Board denies generally and specifically
3 each and every allegation contained therein and affirmatively alleges that there is no "fundamental
4 right" as set forth therein.

5 42. Answering paragraph 42, the Chiropractic Board denies generally and specifically
6 each and every allegation contained therein and affirmatively alleges that chiropractors do not
7 constitute a "suspect class" for purposes of heightened judicial scrutiny.

8 43. Answering paragraph 43 and its subparts appearing at pp. 13-14 of the SAC,
9 the Chiropractic Board lacks information or belief sufficient to be able to answer the allegations
10 in paragraph 43 and, on the basis of that lack of information or belief, denies generally and
11 specifically each and every allegation contained therein.

12 44. Answering paragraph 44 and its subparts appearing at pp. 15-16 of the SAC,
13 the Chiropractic Board admits the allegations contained in paragraph 44, subpart (b), and
14 the allegation in paragraph 44, subpart (c) that the Council on Chiropractic Education ("CCE")
15 "started accrediting chiropractic schools and colleges in the 1940s ." The Chiropractic Board
16 lacks information or belief sufficient to be able to answer the remaining allegations in paragraph
17 44 and, on the basis of that lack of information or belief, denies generally and specifically
18 each and every other such allegation contained therein.

19 45. Answering paragraph 45, the Chiropractic Board denies generally and specifically
20 each and every allegation contained therein and affirmatively alleges that section 7 of the Act,
21 Business and Professions Code section 1000-7, is a rational legislative classification and act
22 of the People of California and, further, that Rule 302 is a rational regulatory interpretation
23 of the scope of chiropractic practice as set forth in section 7 of the Act as interpreted by *Fowler*
24 and *Crees, supra*, to which great weight and deference is due by the judiciary.

25 46. Answering paragraph 46, the Chiropractic Board lacks information or belief
26 sufficient to be able to answer the allegations in paragraph 46 and, on the basis of that lack of
27 information or belief, denies generally and specifically each and every other such allegation

1 contained therein.

2 47. Answering paragraph 47 and its subparts appearing at pp. 16-17 of the SAC,
3 the Chiropractic Board admits that plaintiffs' contentions are as set forth therein, and affirmatively
4 alleges that plaintiffs' said contentions, except as to plaintiffs' admissions therein that (1)
5 Rule 302 is consistent with the analysis of *Fowler and Crees, supra*, and that (2) the issue of
6 the scope of chiropractic practice under the Act is to be decided by this court as a matter of law,
7 are precluded, erroneous, and legally of no force or effect due to the rule of stare decisis and
8 the decisions of *People v. Fowler* (1938) 32 Cal.App.2d (Supp.) 737 and *Crees v. Board of*
9 *Medical Examiners* (1963) 213 Cal.App.2d 195.

10 48. Answering paragraph 48, the Chiropractic Board admits that paragraph 48
11 is a mere pleading convention requiring no answer.

12 49. Answering paragraph 49, the Chiropractic Board denies generally and specifically
13 each and every allegation contained therein and affirmatively alleges that no case or controversy
14 exists between plaintiffs and the Chiropractic Board as to the legality of Rule 302, that any action
15 challenging Rule 302 by plaintiffs is barred by laches, that plaintiffs lack standing to assert any
16 challenge to Rule 302, and that plaintiffs have failed to exhaust administrative remedies.

17 50. Answering paragraph 50, the Chiropractic Board admits that it has
18 enforcement responsibility for Rule 302 as to licensed chiropractors in the State of California.
19 The Chiropractic Board, however, denies generally and specifically each and every allegation
20 in paragraph 50 that there is or may be an enforcement action of any kind pending against
21 plaintiffs in this action or that the enforcement of Rule 302 might in any way interfere with
22 the legitimate exercise of the proper scope of chiropractic under the Act. The Chiropractic Board
23 affirmatively alleges that Rule 302 is a rational regulatory interpretation of the scope of
24 chiropractic practice as set forth in section 7 of the Act as interpreted by *Fowler and Crees,*
25 *supra*, to which great weight and deference is due by the judiciary.

26 51. Answering paragraph 51, the Chiropractic Board denies generally and specifically
27 each and every allegation contained therein, and affirmatively alleges that plaintiffs have failed

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1 to exhaust administrative remedies by presenting their interpretation of section 7 of the Act
2 and/or Rule 302 to the Chiropractic Board for consideration by way of rulemaking or other
3 authoritative interpretation.

4 52. Answering paragraph 52, the Chiropractic Board admits that paragraph 52
5 is a mere pleading convention requiring no answer.

6 53. Answering paragraph 53, the Chiropractic Board admits that in plaintiffs' Second
7 Cause of Action of the SAC plaintiffs seek a judicial declaration and peremptory writ of mandate
8 concerning the meaning of the term "Act" in Rule 302(b)(2).

9 54. Answering paragraph 54, the Chiropractic Board lacks information or belief
10 sufficient to be able to answer the allegations in paragraph 54 and, on the basis of that lack of
11 information or belief, denies generally and specifically each and every other such allegation
12 contained therein.

13 55. Answering paragraph 55, the Chiropractic Board admits the allegations contained
14 therein.

15 56. Answering paragraph 56, the Chiropractic Board admits the allegations contained
16 therein, except that the Chiropractic Board denies generally and specifically any allegation
17 therein that the ballot argument in support of the amendment "did not disagree" with the
18 opponents' ballot statement in that neither the text of the proposed amendment nor the statement
19 of the proposition's opponents referred to increased, expanded or additional "practice rights"
20 to be gained thereby. The Chiropractic Board affirmatively alleges that no reasonable elector
21 could have believed that the proposed amendment providing for the permissive incorporation
22 of "elective" courses in the chiropractic curriculum intended thereby to permit the expansion
23 of the previously existing legal scope of chiropractic practice.

24 57. Answering paragraph 57, the Chiropractic Board admits that section 6(b)
25 of the Act, Business and Professions Code section 1000-6(b), provides in pertinent part that
26 "The board shall meet as a board of examiners at least twice each calendar year, . . ." and that
27 section 6(c) of the Act, Business and Professions Code section 1000-6(c), provides in pertinent

1 part that "Examinations shall be written, oral, and practical, covering chiropractic as taught
2 in chiropractic schools or colleges . . ." The Chiropractic Board affirmatively alleges that
3 section 6(d) of the Act, Business and Professions Code section 1000-6(d) provides in pertinent
4 part that "An applicant having fulfilled the requirements of Section 5 and paid the fee thereunder,
5 and having obtained a certificate from the National Board of Chiropractic Examiners, may offer
6 such certificate together with a transcript of grades secured in said national board examination,
7 and the California Board of Chiropractic Examiners may accept same in lieu of all or a portion
8 of the California board examination as determined by the board."

9 58. Answering paragraph 58, the Chiropractic Board admits the allegations contained
10 therein.

11 59. Answering paragraph 59, the Chiropractic Board denies generally and specifically
12 each and every allegation contained therein and affirmatively alleges that Title 16, California
13 Code of Regulations section 331.12.1(d) states "Additional Hours and Subjects: The school,
14 if it desires, may offer and may require for graduation, course[s] of more than 4,000 hours.
15 Such additional hours may be in elective subjects," and that Title 16, California Code of
16 Regulations section 331.12.2(d) states "Additional Hours and Subjects: It is recommended that
17 a school offer elective subjects, including chiropractic meridian theory, counseling, hypnotherapy
18 and biofeedback. The school may offer and require for graduation courses of more than 4,400
19 hours." The Chiropractic Board further affirmatively alleges that no expanded, increased, further
20 or additional "practice rights," i.e., scope of practice, flow from the elective courses whose
21 content is as set forth herein or from any other elective courses to be offered at any time.

22 60. Answering paragraph 60, the Chiropractic Board lacks information or belief
23 sufficient to be able to answer the allegations in paragraph 60 and, on the basis of that lack of
24 information or belief, denies generally and specifically each and every other such allegation
25 contained therein.

26 61. Answering paragraph 61, the Chiropractic Board admits the allegations contained
27 therein and affirmatively alleges that the Chiropractic Board is under no obligation to examine or
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1 accept results of examinations in subjects other than those determined by the Chiropractic Board
2 to constitute the "minimum" requirements set forth under section 5 of the Act, Business and
3 Professions Code section 1000-5.

4 62. Answering paragraph 62, the Chiropractic Board denies generally and specifically
5 each and every allegation contained therein and affirmatively alleges that no case or controversy
6 exists between plaintiffs and the Chiropractic Board as to the possibility of acquiring any
7 expanded, further or additional "practice rights," i.e., an expanded, increased or additional scope
8 of chiropractic practice, under any amendments to the Act, that any equitable action challenging
9 the Chiropractic Board's interpretation of the said amendments by plaintiffs is barred by laches,
10 that plaintiffs lack standing to assert any challenge to the Chiropractic Board's interpretation of
11 the requirements for chiropractic curricula establishing entry to the Chiropractic Board's
12 licensure process, and that plaintiffs have failed to exhaust administrative remedies.

13 63. Answering paragraph 63 and its subparts, the Chiropractic Board admits
14 the allegations contained therein.

15 64. Answering paragraph 64 and its subparts, the Chiropractic Board admits
16 that plaintiffs' contentions are as set forth therein, and affirmatively alleges that plaintiffs'
17 said contentions are precluded, erroneous, and legally of no force or effect due to the rule of
18 stare decisis and the decisions of *People v. Fowler* (1938) 32 Cal.App.2d (Supp.) 737 and
19 *Crees v. Board of Medical Examiners* (1963) 213 Cal.App.2d 195 and the plain meaning of
20 the amendments referred to therein, which do not create expanded, further, increased or
21 additional "practice rights" for chiropractors or the opportunity to obtain such "rights."

22 65. Answering paragraph 65, the Chiropractic Board admits that in plaintiffs
23 Second Cause of Action of the SAC plaintiffs seek a judicial declaration as set forth therein.
24 The Chiropractic Board denies generally and specifically each and every other allegation
25 contained therein.

26 66. Answering paragraph 66, the Chiropractic Board denies generally and specifically
27 each and every allegation contained therein and affirmatively alleges that no case or controversy

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1 exists between plaintiffs and the Chiropractic Board as to the possibility of acquiring any
2 expanded, further or additional "practice rights," i.e., an expanded, increased or additional scope
3 of chiropractic practice, under any amendments to the Act, that any equitable action challenging
4 the Chiropractic Board's interpretation of the said amendments by plaintiffs is barred by laches,
5 that plaintiffs lack standing to assert any challenge to the Chiropractic Board's interpretation of
6 the requirements for chiropractic curricula establishing entry to the Chiropractic Board's
7 licensure process, and that plaintiffs have failed to exhaust administrative remedies.

8 67. Answering paragraph 67, the Chiropractic Board denies generally and specifically
9 each and every allegation contained therein and affirmatively alleges that Title 16, California
10 Code of Regulations section 331.12.1(d) states "Additional Hours and Subjects: The school,
11 if it desires, may offer and may require for graduation, course[s] of more than 4000 hours.
12 Such additional hours may be in elective subjects," and that Title 16, California Code of
13 Regulations section 331.12.2(d) states "Additional Hours and Subjects: It is recommended that
14 a school offer elective subjects, including chiropractic meridian theory, counseling, hypnotherapy
15 and biofeedback. The school may offer and require for graduation courses of more than 4,400
16 hours." The Chiropractic Board further affirmatively alleges that no expanded, increased, further
17 or additional "practice rights," i.e., scope of practice, flow from the elective courses whose
18 content is as set forth herein. The Chiropractic Board further affirmatively alleges that the
19 writing of regulations is a discretionary act of the Chiropractic Board as set forth at section 4(b)
20 of the Act, as amended, Business and Professions Code section 1000-4(b), which is not subject
21 to mandate.

22 68. Answering paragraph 68, the Chiropractic Board admits that the scope of
23 chiropractic practice is as set forth in *Fowler and Crees, supra*, that Rule 302 articulates and
24 effectuates the standard of chiropractic practice set forth in the Act as declared in *Fowler*
25 and *Crees, supra*, and that no amendments to the Act have, at any time, changed that scope of
26 practice. The Chiropractic Board denies generally and specifically each and every other
27 allegation contained therein.

1 69. Answering paragraph 69, the Chiropractic Board denies generally and specifically
2 each and every allegation contained therein and affirmatively alleges that examination as to
3 courses permitted by Title 16, California Code of Regulations sections 331.12.1(d) and
4 331.12.2(d), as set forth above, is administered in the same form and/or manner as all other
5 examinations administered, accepted or utilized by the Chiropractic Board pursuant to sections
6 6(c) and 6(d) of the Act, as amended, Business and Professions Code sections 1000-6(c)
7 and 1000-6(d), and Title 16, California Code of Regulations section 340, *et seq.*

8 70. Answering paragraph 70, the Chiropractic Board admits that it may write
9 regulations concerning elective courses in chiropractic curricula pursuant to the discretionary
10 authority conferred by section 4(b) of the Act, as amended, Business and Professions Code
11 section 1000-4(b), and that it has done so as set forth herein, above. The Chiropractic Board
12 denies generally and specifically each and every allegation that it is under a duty to promulgate
13 such regulations, since the writing of regulations is a discretionary act as set forth at section 4(b)
14 of the Act, as amended, Business and Professions Code section 1000-4(b), which is not subject
15 to mandate. The Chiropractic Board further affirmatively alleges that no expanded, increased,
16 further or additional "practice rights," i.e., scope of practice, flow from "elective" courses, since
17 the scope of chiropractic practice under the Act, as amended, is as set forth in *Fowler and Crees*,
18 *supra*, and Rule 302 articulates and effectuates that standard, which has not been changed by
19 any amendments to the Act.

20 71. Answering paragraph 71, the Chiropractic Board admits that it is subject to
21 the provisions of sections 6(b) and 6(c) of the Act, Business and Professions Code sections
22 1000-6(b) and 1000-6(c), and that examination as to courses permitted by Title 16, California
23 Code of Regulations sections 331.12.1(d) and 331.12.2(d), as set forth above, is administered
24 in the same form and/or manner as all other examinations administered, accepted or utilized by
25 the Chiropractic Board pursuant to sections 6(c) and 6(d) of the Act, as amended, Business and
26 Professions Code sections 1000-6(c) and 1000-6(d), and Title 16, California Code of Regulations
27 section 340, *et seq.* The Chiropractic Board denies generally and specifically each and every

1 other allegation contained therein.

2 72. Answering paragraph 72, the Chiropractic Board denies generally and specifically
3 each and every allegation contained therein, and affirmatively alleges that no case or controversy
4 exists between plaintiffs and the Chiropractic Board as to the possibility of acquiring any
5 expanded, further or additional "practice rights," i.e., an expanded, increased or additional scope
6 of chiropractic practice, under any amendments to the Act, that plaintiffs have failed to exhaust
7 administrative remedies by presenting their interpretation of the "electives" component of
8 chiropractic education to the Chiropractic Board for consideration by way of rulemaking or other
9 authoritative interpretation, that plaintiffs have suffered no harm from the Chiropractic Board's
10 effectuation of the "electives" component of chiropractic education permitted under the Act
11 as amended, i.e., that plaintiffs lack standing to challenge said effectuation, and that the
12 Chiropractic Board is under no duty to promulgate regulations of any kind or sort for the reasons
13 previously set forth herein, above.

14 73. Answering paragraph 73, the Chiropractic Board admits that paragraph 73
15 is a mere pleading convention requiring no answer.

16 74. Answering paragraph 74, the Chiropractic Board admits that the amendments
17 to the Act of 1976 and 1978 changed the method for approval of chiropractic schools or colleges
18 whose graduates were eligible to become licensed as chiropractors in the State of California,
19 and that prior to the said amendments the Chiropractic Board made such approval decisions
20 itself. The Chiropractic Board denies generally and specifically each and every other allegation
21 contained therein.

22 75. Answering paragraph 75, the Chiropractic Board lacks information or belief
23 sufficient to be able to answer the allegations in paragraph 75 and, on the basis of that lack of
24 information or belief, denies generally and specifically each and every other such allegation
25 contained therein.

26 76. Answering paragraph 76, the Chiropractic Board admits that plaintiffs each
27 graduated from a chiropractic school accredited by the Council on Chiropractic Education.

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1 The Chiropractic Board lacks information or belief sufficient to be able to answer the allegations
2 in paragraph 76 as to the opportunity provided by the said schools for plaintiffs to take elective
3 courses during their chiropractic programs and, on the basis of that lack of information
4 or belief, denies generally and specifically each and every such allegation contained therein.
5 The Chiropractic Board admits that plaintiffs make the further and additional contentions
6 contained in paragraph 76. The Chiropractic Board denies generally and specifically each and
7 every allegation that plaintiffs may acquire increased "practice rights," i.e., an expanded scope of
8 chiropractic practice, as a result of completion of any elective courses at any time or place.

9 77. Answering paragraph 77, the Chiropractic Board lacks information or belief
10 sufficient to be able to answer the allegations in paragraph 77 and, on the basis of that lack of
11 information or belief, denies generally and specifically each and every allegation contained
12 therein. The Chiropractic Board denies generally and specifically each and every allegation that
13 plaintiffs may acquire increased "practice rights," i.e., an expanded scope of chiropractic
14 practice, as a result of completion of any elective courses at any time or place.

15 78. Answering paragraph 78, the Chiropractic Board admits that paragraph 78
16 is a mere pleading convention requiring no answer.

17 79. Answering paragraph 79, the Chiropractic Board lacks information or belief
18 sufficient to be able to answer the allegations in paragraph 79 and, on the basis of that lack of
19 information or belief, denies generally and specifically each and every allegation contained
20 therein.

21 80. Answering paragraph 80, the Chiropractic Board lacks information or belief
22 sufficient to be able to answer the allegations in paragraph 80 and, on the basis of that lack of
23 information or belief, denies generally and specifically each and every allegation contained
24 therein.

25 81. Answering paragraph 81, the Chiropractic Board lacks information or belief
26 sufficient to be able to answer the allegations in paragraph 81 and, on the basis of that lack of
27 information or belief, denies generally and specifically each and every allegation contained therein.

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1 82. Answering paragraph 82, the Chiropractic Board denies generally and specifically
2 each and every allegation contained therein.

3 83. Answering paragraph 83, the Chiropractic Board, as to itself, denies generally
4 and specifically each and every allegation contained therein and affirmatively alleges that
5 the amendments to the Act at issue herein conferred no function to perform or power or duty
6 on the Council on Chiropractic Education ("CCE") within the meaning of Article II, section 12
7 of the California Constitution.

8 84. Answering paragraph 84, the Chiropractic Board denies generally and specifically
9 each and every allegation contained therein and affirmatively alleges that the Chiropractic Board
10 may at any time approve any chiropractic program accredited by any "other chiropractic school
11 and college accrediting agencies as may be recognized by the United States Commissioner of
12 Education, or chiropractic school and accrediting agencies employing equivalent standards for
13 accreditation as determined by the board," as set forth in section 4(g)(3) of the Act, as amended,
14 Business and Professions Code section 1000-4(g)(3). The Chiropractic Board further
15 affirmatively alleges that no legal provision exists whereby separate "portions" of a chiropractic
16 program may be identified in isolation from all other components of a chiropractic program
17 accredited or approved by the Chiropractic Board, including any so-called "elective" portion at
18 any level whatsoever, "undergraduate" or "postgraduate."

19 85. Answering paragraph 85 and its subparts, the Chiropractic Board admits
20 that plaintiffs' contentions are as set forth therein, and affirmatively alleges that plaintiffs' said
21 contentions, except as to plaintiffs' contention therein that the Chiropractic Board has the right
22 to approve chiropractic schools or colleges without said schools or colleges being accredited
23 by the CCE, are precluded, erroneous, and legally of no force or effect.

24 86. Answering paragraph 86, the Chiropractic Board admits that in plaintiffs'
25 Third Cause of Action of the SAC plaintiffs seek a judicial determination and declaration as set
26 forth therein. The Chiropractic Board denies generally and specifically each and every other
27 allegation contained therein.

1 87. Answering paragraph 87, the Chiropractic Board denies generally and specifically
2 each and every allegation contained therein and affirmatively alleges that no case or controversy
3 exists between plaintiffs and the Chiropractic Board as to the legality of the role of the CCE
4 under the Act, as amended, that any equitable action challenging the said role of the CCE
5 by plaintiffs is barred by laches, that plaintiffs lack standing to assert any challenge to the role of
6 the CCE concerning the approval of chiropractic curricula establishing entry to the Chiropractic
7 Board's licensure process, and that plaintiffs have failed to exhaust administrative remedies.

8 88. Answering paragraph 88, the Chiropractic Board admits the allegations contained
9 therein.

10 89. Answering paragraph 89, the Chiropractic Board denies generally and specifically
11 each and every allegation contained therein and affirmatively alleges that the approval of
12 chiropractic curricula at all levels is a discretionary decision of the Chiropractic Board under
13 its authority conferred by the Act and that therefore the Chiropractic Board is under
14 no duty whatsoever to approve chiropractic curricula at any time or place and, further, that
15 no legal provision exists whereby separate "portions" of a chiropractic program may be identified
16 in isolation from all other components of a chiropractic program accredited or approved by the
17 Chiropractic Board, including any so-called "elective" portion at any level whatsoever,
18 "undergraduate" or "postgraduate."

19 90. Answering paragraph 90, the Chiropractic Board denies generally and specifically
20 each and every allegation contained therein and affirmatively alleges that plaintiffs have failed
21 to exhaust administrative remedies by presenting their interpretation of the approval process for
22 "postgraduate" chiropractic "elective" courses to the Chiropractic Board for consideration by
23 way of rulemaking or other authoritative interpretation, that plaintiffs have suffered no harm
24 from the Chiropractic Board's approval of chiropractic curricula, i.e., that plaintiffs lack standing
25 to challenge the Chiropractic Board's approval of chiropractic curricula leading to admission
26 to the Chiropractic Board's licensing process, that plaintiffs' challenge to the Chiropractic
27 Board's approval of chiropractic curricula leading to admission to the Chiropractic Board's

1 licensing process is barred by laches, and that, since the approval of chiropractic curricula
 2 at all levels is a discretionary decision of the Chiropractic Board under its authority conferred
 3 by the Act, the Chiropractic Board is under no duty whatsoever to approve chiropractic curricula
 4 at any time or place.

5 FIRST AFFIRMATIVE DEFENSE

6 Stare Decisis

7 1. The question of the scope of chiropractic practice under the Act, as amended,
 8 and under the Chiropractic Board's regulations, specifically Rule 302, is a pure question of law
 9 and the applicable law is set forth in *People v. Fowler* (1938) 32 Cal.App.2d (Supp.) 737
 10 and/or *Crees v. Board of Medical Examiners* (1963) 213 Cal.App.2d 195, wherein it is shown
 11 that chiropractic is a system of spinal adjustment performed by hand only and that chiropractors
 12 may not sever or penetrate human tissue.

13 SECOND AFFIRMATIVE DEFENSE

14 No Additional Practice Rights

15 2. The plain language of all amendments to the Act at any time establishes
 16 that no expanded, increased, further or additional "practice rights," i.e., a scope of chiropractic
 17 practice beyond or more inclusive than that set forth in Rule 302 and *Fowler* and/or *Crees, supra*,
 18 were created thereunder, nor the potential therefor and, further, that no reasonable elector could
 19 or would have believed that such expanded, etc., rights or scope of practice were created thereby.

20 THIRD AFFIRMATIVE DEFENSE

21 No Constitutional Violation

22 3. The amendments to the Act do not confer on the Council on Chiropractic
 23 Education any function to be performed or the possession of any power or duty in violation of
 24 California Constitution, Article II, Section 12. Rather, the amendments merely provide that the
 25 Council on Chiropractic Education, by virtue of its independently existing accrediting activities,
 26 may be used by the Chiropractic Board as a non-exclusive resource for determinations by the
 27 Chiropractic Board as to qualifications of candidates for licensure. The Council on Chiropractic

1 Education was not a sponsor or supporter of the amendments, nor did it receive any special
 2 privileges thereunder, within the meaning of those terms as set forth in *Calfarm Ins. Co. v.*
 3 *Deukmejian* (1989) 48 Cal.3d 805.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 **No Case Or Controversy**

6 4. Plaintiffs cannot maintain actions for declaratory relief, injunctive relief,
 7 or mandate, as prayed for in plaintiffs' first, second and third causes of action, because there
 8 is not "more than one answer" to the questions raised by plaintiffs as to (1) the scope of
 9 chiropractic practice, (2) the creation of additional "practice rights," i.e., an expanded scope of
 10 chiropractic practice, under the Act or its amendments, or (3) the legality of the role of the
 11 Council on Chiropractic Education under Article II, Section 12 of the California Constitution.
 12 (*Gillies v. La Mesa, etc. Irrigation Dist.* (1942) 54 Cal.App.2d 756.)

13 **FIFTH AFFIRMATIVE DEFENSE**

14 **No Standing**

15 5. Plaintiffs may not maintain any of their causes of action because, as they have
 16 admitted, they have not been charged with any violation of the Chiropractic Initiative Act,
 17 as amended, or of any of the duly adopted regulations thereunder, nor are there any charges of
 18 practicing medicine or some other licensed healing profession without a license pending against
 19 plaintiffs. Plaintiffs received licensure knowing of the scope of practice under Rule 302
 20 and *Fowler* and/or *Crees, supra*, and were admitted to examinations based on graduation from
 21 chiropractic programs accredited by the Council on Chiropractic Education. There is therefore
 22 no justiciable and actual case or controversy between plaintiffs and the Chiropractic Board, and
 23 plaintiffs are without a beneficial interest for purposes of this court's extraordinary jurisdiction
 24 in mandate or otherwise.

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SIXTH AFFIRMATIVE DEFENSE**Failure To Exhaust Remedies**

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3 6. Plaintiffs may not maintain any of their causes of action because they have failed
4 to exhaust administrative remedies in that plaintiffs have not presented to the Chiropractic Board
5 for rulemaking, a prior administrative determination, or other action their contentions as to (1)
6 the proper scope of chiropractic practice, (2) the creation of additional "practice rights," i.e.,
7 an expanded scope of chiropractic practice, under the Act or its amendments, or (3) the legality
8 of the role of the Council on Chiropractic Education under Article II, Section 12 of the California
9 Constitution.

SEVENTH AFFIRMATIVE DEFENSE**Laches**

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12 7. Plaintiffs may not maintain any of their causes of action, which are all of equitable
13 nature, in that plaintiffs have unreasonably delayed to the prejudice of the Chiropractic Board
14 and/or acquiesced in the conduct complained of in bringing said causes of action.

EIGHTH AFFIRMATIVE DEFENSE**No Ministerial Duty**

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17 8. Plaintiffs may not maintain their second and third causes of action seeking relief
18 in mandate in that the Chiropractic Board is not under any ministerial duty to promulgate
19 regulations or take any other discretionary action as pled by plaintiffs in those causes of action.

NINTH AFFIRMATIVE DEFENSE**No Injunctive Relief**

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22 9. Plaintiffs may not maintain any action for injunctive relief as pled and prayed
23 for in their first cause of action since they have not shown a case or controversy sufficient
24 to establish a cause of action for declaratory relief therein.

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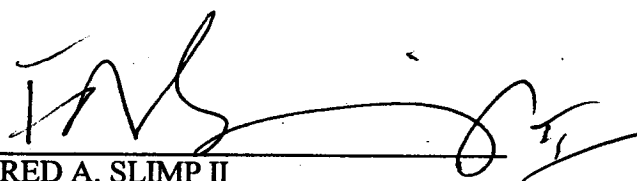
WHEREFORE, the Chiropractic Board respectfully prays for an order:

1. Dismissing plaintiffs' Second Amended Complaint in its entirety;
2. Determining that plaintiffs take nothing by way of this Action;
3. Directing that the Chiropractic Board recover its costs herein; and
4. Providing such other and further relief as to the court shall seem proper.

DATED: November 12, 2003

Respectfully submitted,

BILL LOCKYER, Attorney General
of the State of California



FRED A. SLIMP II
Deputy Attorney General

Attorneys for Defendant and Respondent
Board of Chiropractic Examiners

PROOF OF SERVICE

Page 1 of 2

CASE NAME: Laurence Tain, D.C., et al., v. State Board of Chiropractic Examiners, et al.**CASE NO.:** CGC-03-419378 in the Superior Court of California, County of San Francisco

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause; my business address is 1515 Clay Street, 20th Floor, Oakland, California 94612-1413. On November 12, 2003, I served the following document(s):

**DEFENDANT AND RESPONDENT BOARD OF CHIROPRACTIC EXAMINERS'
ANSWER TO SECOND AMENDED COMPLAINT**

on the parties through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below for service as designated below:

- (A) **By First Class Mail:** I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General with first-class postage thereon fully prepaid in a sealed envelope, for deposit in the United States Postal Service that same day in the ordinary course of business.
- (B) **By Certified Mail:** I caused each such envelope to be placed in the internal mail collection system at the Office of the Attorney General with first-class postage thereon fully prepaid in a sealed envelope, for deposit in the United States Postal Service that same day in the ordinary course of business.
- (C) **By Overnight Mail:** I caused each such envelope to be placed in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for.
- (D) **By Messenger Service:** I caused each such envelope to be delivered by a courier, with whom we have a direct billing account, who personally delivered each such envelope to the office of the address on the date last written below.
- (E) **By Facsimile:** I caused each such document to be served via facsimile electronic equipment transmission (fax) on the parties in this action by transmitting a true copy to the following fax numbers listed under each addressee below.
- (F) **By E-mail:** I caused each such document to be served via electronic equipment transmission (E-mail) on the parties in this action by transmitting a true copy to the following E-mail addresses listed under each addressee below.

PROOF OF SERVICE

Page 2 of 2

TYPE OF SERVICE**ADDRESSEE**

(C)

David Prescott, Esq.
Veritas Justice & Bioethics Institute
22365 El Toro Road, Suite 109
Lake Forrest, CA 92630

Attorney for
PLAINTIFFS AND PETITIONERS

(A)

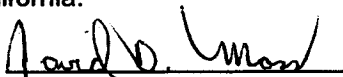
Michael J. Schroeder, Esq.
1851 East First Street, Suite 1160
Santa Ana, CA 92705

Attorney for
COUNCIL ON CHIROPRACTIC EDUCATION

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on November 12, 2003, at Oakland, California.

DAVID B. MOSS

(Typed Name)


(Signature)